

In the United States Patent and Trademark Office

Applicants:	W. F. Lonsky et al.	Docket	18,693.1
Serial No.:	Not Yet Assigned	Group:	Unknown
Confirmation No:	Not Yet Assigned	Examiner:	Unknown
Filed:	December 5, 2003	Date:	December 5, 2003
For:	YELLOWING PREVENTION OF CELLULOSE-BASED CONSUMER PRODUCTS		

Commissioner For Patents
P.O. Box 1450
Arlington, VA 22313-1450

AFFIDAVIT OF JUDY L. GAROT


[illegible]

Judy L. Garot, being duly sworn, and having personal knowledge of the facts set forth herein, hereby deposes and says that:

1. I am employed by Kimberly-Clark Worldwide, Inc., 401 North Lake Street, Neenah, WI 54956 as an administrative assistant in the Legal Department/Patents and have been employed by Kimberly-Clark Worldwide, Inc. since December 27, 1978. I am currently assigned as assistant to Patricia A. Charlier, the attorney prosecuting the above-referenced application.
2. As part of my duties, I prepare the paperwork to accompany the patent applications filed by Ms. Charlier and work with the inventors of the applications to obtain their signatures on the required documents.

3. The above-referenced application is a continuation-in-part of U.S.S.N. 10/315,697 and also claims priority to provisional application U.S.S.N. 60/479,719 filed June 18, 2003. In July of 2003, I contacted the three named inventors, Werner Franz Wilhelm Lonsky, William Hung Nguyen and Kevin Bradley Sartain and obtained their signatures on an Assignment to Kimberly-Clark Worldwide, Inc. which was recorded on July 30, 2003 at Reel 013842 and Frame 0006. A true and correct copy is enclosed as Exhibit A. I also obtained their signatures on a Combined Declaration and Power of Attorney - Provisional U.S. Patent Application. A true and correct copy of that document is enclosed as Exhibit B.
4. At the time the provisional application was filed on June 18, 2003, Messrs. Lonsky, Nguyen and Sartain were all employed by Kimberly-Clark Worldwide, Inc., the Assignee. During the time between the filing of the provisional application and the filing of the above-referenced continuation-in-part application, Co-Inventor Nguyen's employment with Kimberly-Clark Worldwide, Inc. was terminated.
5. During the first week of November, 2003, I again made contact with Messrs. Lonsky and Sartain about obtaining their signatures on the paperwork for the continuation-in-part application. I forwarded the documents first to Mr. Sartain who was located in Jenks, Oklahoma. On or about the week of November 10, 2003 I spoke with Mr. Nguyen by telephone to make arrangements with him for signing the paperwork. Mr. Nguyen gave me an alternate phone number to try if I was unable to reach him at his home number and I interpreted his demeanor during the time of this conversation to indicate that he was willing to consider signing the paperwork when it was returned to me by Co-Inventor Sartain.
6. On November 17, 2003 I again made two telephone calls to Mr. Nguyen at his home and left him a voice mail indicating that the paperwork was now ready for his signature. I didn't receive a response and left a message for Mr. Nguyen at the alternate phone number he provided.
7. On November 19, 2003 at about 3:10 p.m., Mr. Nguyen called my office and related to me that he had reconsidered and would not sign the Assignment or Combined Declaration and Power of Attorney documents after all. He indicated that he was going to leave later that day for an extended visit to his family in Minnesota. Mr. Nguyen also stated the reason for his refusal to sign the documents was that his employment with Kimberly-Clark Worldwide, Inc. was terminated and he felt that he did not have any obligation to work with Kimberly-Clark Worldwide, Inc. in obtaining a patent.

8. I interpret the conduct of Mr. Nguyen during my November 19, 2003 teleconference with him as a clear indication that Mr. Nguyen will refuse to receive or even consider any patent application papers which I offer to him for execution. In view of his general refusal, as set forth above, it makes no sense now to waste further time by forwarding copies to Mr. Nguyen for execution.


Judy L. Garot
Judy L. Garot

Subscribed to and sworn before me this 5th day of December, 2003 at Neenah, Wisconsin.

Cheryl R. Gorges
Cheryl R. Gorges
Notary Public
Winnebago County, Wisconsin

My Commission Expires: September 11, 2005.



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**PETITION FOR FILING BY OTHER THAN ALL THE INVENTORS
UNDER 37 C.F.R. §1.47(a)**

Dear Sir:

Applicants, Werner Franz Wilhelm Lonsky and Kevin Bradley Sartin, hereby petition the Commissioner to accept the filing of the above-referenced U.S. patent application by other than all of the inventors.

An Affidavit is attached hereto providing proof of the pertinent facts concerning the refusal of one co-inventor to join in the present application for patent.

The name and last-known address of the co-inventor refusing to join in this application are as follows:

William Hung Nguyen
2302 Southwood Drive, #6
Appleton, WI 54915

The invention was developed under the authorization of Kimberly-Clark Worldwide, Inc. (hereinafter "K-C") by Werner Franz Wilhelm Lonsky, William Hung Nguyen and Kevin Bradley Sartin as employees of Kimberly-Clark Worldwide, Inc. Co-inventor Nguyen's employment with K-C was terminated in October of 2003.

Upon information and belief, based on the precedent which will be discussed below, K-C is entitled to clear title of this invention and to the above-identified patent application and any patent which issues thereon.

The Supreme Court of the United States in Solomons v. U.S., 26 Ct. Cl. 620, 137 U.S. 342, 346, 11 S. Ct. 88, 34 L. Ed. 667 (1890) held:

If one is employed to devise or perfect an instrument, or a means for accomplishing a prescribed result, he cannot, after successfully accomplishing the work for which he was employed, plead title thereto as against his employer. That which he has been employed and paid to accomplish becomes, when accomplished, the property of his employer. Whatever rights as an individual he may have had in and to his inventive powers, and that which they are able to accomplish, he has sold in advance to his employer.

Since Lonsky, Nguyen and Sartain were employed by K-C, that is, paid compensation to develop the consumer product packaging system to prevent yellowing of cellulose-based consumer products, the invention belongs to K-C and each individual inventor who contributed to the development of the device has a duty to jointly execute an application for patent covering the device and to assign the invention, patent application and any patent which issues thereon to K-C. The fact that Co-inventor Nguyen has now left the employment of K-C does not affect his duty to assign the invention to K-C.

In view of the refusal of Co-Inventor Nguyen to execute the papers required for filing the patent application, Lonsky and Sartain are believed to be entitled to make such application on behalf of and as agents for their co-inventor Nguyen.

The required fee of \$130.00 should be charged to U.S. deposit account 11-0875.

The undersigned may be reached at (920) 721-7671.

Respectfully submitted,

WERNER FRANZ WILHELM LONSKY ET AL.

By: 

Patricia A. Charlier

Registration No. 38,840

Kimberly-Clark Worldwide, Inc.

401 North Lake Street

Neenah, WI 54956